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LAURA M. BIVINS
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WAKE COUNTY

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DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
WHITEHART

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DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR WHITEHART

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STATE OF NORTH CAROLINA

WAKE COUNTY

DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
WHITEHART SUBDIVISION
BOOK OF MAPS 1997
PAGE ~~000445~~ 1645

THIS DECLARATION, made this 2nd day of OCTOBER, 1997 by H.M. Enterprises, Whitehart Limited Partnership, a North Carolina Limited Partnership, hereinafter referred to as "Declarant";

WITNESSETH:

WHEREAS, Declarant is the owner of certain property on Graham Newton Road and SR-1010, Wake County, North Carolina, and more particularly described as follows:

BEING all that property shown on map of Whitehart Subdivision and recorded in Book of Maps 1997, Pages 1645/6, Wake County Register of Deeds.

WHEREAS, Declarant will convey the said property, subject to certain protective covenants, conditions, restrictions, liens, and charges as hereinafter set forth;

NOW, THEREFORE, Declarant hereby declares that all of the property described above shall be held, sold, and conveyed subject to the following easements, restrictions, covenants and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the real property. These easements, restrictions, covenants, and conditions shall run with the real property and shall be binding on all parties having or acquiring any right, title or interest in the described property or any part thereof, and shall inure to the benefit of each owner thereof.

ARTICLE I
DEFINITIONS

Section 1. "Association" shall mean and refer to Whitehart Association, its successors and/or assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Property" shall mean and refer to that certain real property hereinabove described.

Section 4. "Permanent Open Space" shall mean all real property dedicated to the common use and enjoyment of the owners, including, but not limited to, the real property conveyed to the Association. Permanent Open Space shall be maintained for forestry, agriculture or active and passive recreational uses. Permanent Open Space shall not include public and private roads within the property, and shall not include utility lines and utility structures. The Permanent Open Space shall be designated on a plat or plats of Whitehart Subdivision recorded or to be recorded in the office of the Wake County Register of Deeds.

All Permanent Open Space shall be subject to easements for utilities, including sewer and waterlines, easements for ingress and egress, and easements for any encroachments arising from the initial improvements.

Section 5. "Lot" shall mean and refer to any numbered plot of land shown upon the plat of Whitehart Subdivision recorded in Map Book 1997, Page 1645/6, Wake County Registry, with the exception of the Permanent Open Space.

Section 6. "Member" shall mean and refer to every person or entity who holds membership with voting rights in the Association.

Section 7. "Board" shall mean and refer to the Board of Directors of the Association.

ARTICLE II PROPERTY DEVELOPMENT PLAN

Section 1. ZONING REQUIREMENTS: The properties shall be developed in accordance with a plan that complies with the applicable zoning regulations and the requirements for a Cluster Development.

a. A maximum of seventy-five percent (75%) of the area of the property shall be included within lots and associated off-street parking for such lots.

b. A minimum of twenty-five percent (25%) of the area of the property may include utility areas, recreational facilities, such as playing fields and tennis courts; community buildings, such as clubhouses; and Permanent Open Space set aside for passive recreation or for forestry, pasture or agriculture. Off-street parking for persons using facilities may also be included within the twenty-five percent (25%) area.

c. The recorded plat for the property shall show that no less than twenty-five percent (25%) of the total area has been reserved for Permanent Open Space.

d. The entire subdivision shall at all times remain in compliance with the governing percentages of land area dedicated to individual lots and to Permanent Open Space.

Section 2. EASEMENTS: The ownership of utility easements and facilities are reserved at this time for conveyance to a public or private utility company or companies, to a municipality, or the Association.

Section 3. MAINTENANCE OF STREETS: The responsibility for maintaining the public streets and roadways within the property shall remain with Declarant until such time as said streets and roadways are accepted on the Secondary Roads System of the NC Department of Transportation.

Section 4. UTILITY AREAS SHOWN ON RECORDED PLAT: Utility areas shown on the recorded plat are part of the open space but are intended and reserved only for the installation and maintenance of a subsurface sewage disposal field. The lot to which the area is assigned is designated by the lot number preceding the term "utility area" and all costs of installation and maintenance of the subsurface sewage field and all components thereof shall be the sole responsibility of the lot owner and his successors in title. This provision shall remain effective and survive expiration of these covenants until connection to private or public sewer as approved by Wake County Environmental Health.

ARTICLE III PROPERTY RIGHTS

Section 1. OWNER'S EASEMENT OF ENJOYMENT: Every owner shall have a right and easement of enjoyment in and to the Permanent Open Space which shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

a. The right of the Association to permit the use of and to charge reasonable admission and other fees for the use of any recreational facility situated upon the Permanent Open space.

b. The right of the Association to suspend the voting rights and right to use the Permanent Open Space facilities by an owner for any period during which any assessment against his lot remains unpaid; and for a period not to exceed sixty (60) days for any infractions of its published rules and regulations.

c. The right of the Association to dedicate or transfer all or part of the Permanent Open Space to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by at least two-thirds (2/3) of the members, agreeing to such dedication or transfer, has been recorded, and provided the dedication or transfer is in compliance with applicable zoning regulations.

d. The right of the Association to impose regulations for the use and enjoyment of the Permanent Open Space and improvements thereon, which regulations may further restrict the use of the Permanent Open Space.

Section 2. RIGHT TO DELEGATE: Any owner may delegate his right of enjoyment to the Permanent Open Space and facilities to the members of his family, his tenants, guests or contract purchasers who reside on his property.

Section 3. TITLE TO PERMANENT OPEN SPACE: While reserving the right to build and own facilities on the Permanent Open Space and to charge reasonable fees for use of said facilities, the Declarant hereby covenants for itself, its successors or assigns, that it will convey to the Association fee simple title to the Permanent Open Space specifically described in the recorded plat. Such conveyance shall be free and clear of all encumbrances and liens, but shall be subject to these covenants and to all easements of record for utilities and for access. Subject to Article II, Section I of these covenants, it is expressly provided that the Declarant, at its sole discretion, may exchange with the Association for fair value any portion of the Permanent Open Space heretofore conveyed to the Association for additional contiguous property to be added to the Permanent Open Space. Upon such exchange and conveyance the area conveyed to the Declarant shall cease to be Permanent Open Space and shall cease to be subject to the provisions of this Declaration relating to the Permanent Open Space. Any area acquired by the Association pursuant to the foregoing language shall become Permanent Open Space and be subject to the provisions of these covenants relating to Permanent Open Space.

Section 4. PARKING RIGHTS: The association may regulate the parking of boats, trailers and other such items on the Permanent open space. No boats or trailers shall be parked within the right-of-way of any public street in or adjacent to the property described herein.

ARTICLE IV MEMBERSHIP AND VOTING RIGHTS

Section 1. MEMBERSHIP: Every owner of a lot which is subject to a lien for assessments shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment.

Section 2. VOTING RIGHTS: The Association shall have two classes of voting membership:

CLASS A: All owners, other than the Declarant, shall be Class A members. Class A members shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot, all such persons shall be members. The vote or votes for such lots shall be exercised as they themselves determine, but in no event shall more than one vote be cast with respect to any lot.

CLASS B: The Class B member shall be the Declarant and the Declarant shall be entitled to two votes for each lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- a. When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or
- b. On December 31, 1999.

ARTICLE V
COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 1. CREATION OF THE LIEN AND PERSONAL OBLIGATION FOR ASSESSMENTS: The Declarant, for each lot owned within the property, hereby covenants, and each owner of any lot, by acceptance of a Deed therefore, whether or not it shall be so expressed in such Deed, is deemed to covenant and agree to pay to the Association:

- a. Annual assessments or charges, and
- b. Special assessments for capital improvements, such assessments to be established as hereinafter provided, and
- c. To the appropriate governmental taxing authority, a pro-rata share of ad taxes levied against the Permanent Open Space and a pro-rata share of assessments for public improvements to the Permanent Open Space if the Association shall default in the payment thereof for a period of six (6) months, all as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with costs and reasonable attorney's fees shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation for the delinquent assessments shall not pass to his successors in title unless expressly assumed by them. Permanent Open Space areas shall not be subject to assessment.

Section 2. PURPOSE OF ASSESSMENTS: The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the property and in particular for the improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Permanent Open Space including but not limited to, the cost of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes against the Permanent Open Space, the procurement and maintenance of insurance in accordance with the by-laws, the employment of attorneys to represent the Association when necessary, for the maintenance of the roads and streets, for the maintenance and operation of water, sewer, and other utility systems, if owned by the Association, and for such other needs as may arise.

Section 3. MAXIMUM ANNUAL ASSESSMENTS: Until January 1st of the year immediately following the conveyance of the first lot to an owner, the maximum annual assessment shall be Five Dollars and No/100 (\$5.00) per lot.

a. The Maximum Annual Assessment for the calendar year immediately following the conveyance of the first lot to an owner and for each calendar year thereafter shall be established by the Board and may be increased by the Board without approval by the membership by an amount not to exceed five percent (5%) of the Maximum Annual Assessment of the previous year.

b. The Maximum Annual Assessment for the calendar year immediately following the conveyances of the first lot to an owner and for each calendar year thereafter may be increased without without limitation by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

c. The Board may fix the Annual Assessment at an amount not in excess of the maximum, subject to the provisions of this Article.

Section 4. SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS: In addition to the annual assessments authorized above, the Association may levy, in any calendar year, a special assessment for the purpose of defraying in whole or in part, the part of any construction, reconstruction, repair or replacement of a capital improvement within the Permanent Open Space including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose. All special assessments shall be fixed at a uniform rate for all lots and may be collected on a monthly basis.

Section 5. NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTIONS 3 AND 4: Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 of this Article shall be sent to all members not less than fifteen (15) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of memberships shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. RATE OF ANNUAL ASSESSMENTS: Both annual and special assessments must be fixed at a uniform rate for all lots.

Section 7. DATE AND COMMENCEMENT OF ANNUAL ASSESSMENTS: DUE DATES: The Annual Assessments provided for herein shall be collected on a monthly basis and shall commence on the first day of the month following the conveyance of the lot by the Declarant to an owner. The first Annual Assessment shall be adjusted according to the number of months remaining in the calendar year. At least thirty (30) days in advance of each Annual Assessment period, the Board shall fix the amount of Annual Assessment to every owner subject thereto. The due dates shall be established by the Board. The association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specific lot have been paid.

Section 8. EFFECT OF NON-PAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION: Any Assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of eighteen percent (18%) per annum. The Association may bring an action at law against the owner personally obligated to pay the same or foreclose the lien against the property in the same manner as the foreclosure of Deeds of Trust, and interest, costs and reasonable attorney's fees of such action or foreclosure shall be added to the amount of such assessment. No owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the Permanent Open Space or abandonment of his lot.

Section 9. EFFECT OF DEFAULT IN PAYMENT OF AD VALOREM TAXES OR ASSESSMENTS FOR PUBLIC IMPROVEMENTS BY THE ASSOCIATION: Upon default by the Association in the payment to the governmental authority entitled thereto of any ad valorem taxes levied against the Permanent Open Space or assessments for public improvements to the Permanent Open Space which default shall continue for a period of six months, each owner of a lot in the development shall become personally obligated to pay the taxing or assessing governmental authority a portion of such unpaid taxes or assessments in an amount determined by dividing the total taxes and/or assessments due the governmental authority by the total number of lots in the development. If each sum is not paid by the owner within thirty (30) days following receipt of notice of the amount due, then such sum shall become a continuing lien on the lot of the then owner, his heirs, devisees, personal representatives or assigns, and the taxing or assessing governmental authority may either bring an action at law or may elect to foreclose the lien against the lot of the owner.

Section 10. SUBORDINATION OF LIENS: The liens provided for herein shall be subordinate to the lien of any mortgage, mortgages, Deed of Trust or Deeds of Trust. Sale or transfer of any lot shall not affect the assessment lien or liens provided for in the preceding Section. However, the sale or transfer of any lot which is subject to any mortgage or Deed of Trust, pursuant to a foreclosure thereof or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessment as to the payment thereof which becomes due prior to such sale or transfer. No such sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any mortgage, mortgages, Deed of Trust or Deeds of Trust.

Section 11. EXEMPT PROPERTY: The following property, individuals, partnerships, or corporations subject to this Declaration shall be exempt from the assessment charge and lien created herein:

- a. The grantee in conveyances made to utility companies for wells, tanks, pipelines, treatment plats and dispersion fields, lines, pumping stations and maintenance facilities, or for the purpose of creating utility easements;

- b. All Permanent Open Space;
- c. All properties exempted from taxation by the laws of the state of North Carolina, upon the terms and to the extent of such exemption;
- d. All vacant lots owned by Declarant so long as it owns more than one-tenth (1/10) of all lots on the recorded plats of Whitehart and any additional lands annexed as herein provided. The Declarant will, however, make contributions to the Association for the purpose of defraying maintenance and upkeep costs so long as it is exempt from assessments. After its lot ownership drops below one-tenth (1/10), its unsold lots will be subject to assessment on the same basis as vacant lots acquired by an individual;
- e. All vacant lots for the period of one year after their initial conveyance by the Declarant.

ARTICLE VI ARCHITECTURAL CONTROL

Section 1. REVIEW AND APPROVAL OF SPECIFICATION FOR CONSTRUCTION OF STRUCTURES, ADDITIONS, ALTERNATIONS OR CHANGES TO STRUCTURES AND LANDSCAPING: In order to maintain architectural beauty throughout the subdivision and to guard against the erection therein of poorly placed, designed or proportioned structures, no building, structure or fence shall be erected, altered or permitted to remain on any building unit until the architectural committee has approved, in writing, (a) a plot plan showing the proposed location of the house and garage and anything whatsoever to be constructed including but not limited to the following: decks, patios, driveways and any trees to be disturbed; (b) a complete set of plans and specifications for the house, garage and anything whatsoever proposed to be built on a lot in this subdivision. All structures are to be completed exactly as submitted and the Declarant, its agents, successors or assigns shall have sole authority for approval. In addition to the above, shall be submitted an exterior design schedule showing types of materials to be used and a color schedule, including chips of exterior paint to be used. (c) In addition, no radio, television or other antennas may be erected on a lot or structure without the prior approval of the Architectural Committee. No satellite discs, temporary or otherwise, may be erected upon any lot. No radio station or short-wave radio operation shall be permitted to operate upon any lot. All outdoor poles, clothes lines or similar equipment shall be erected so as not to be visible to users of any street or community recreational area. No mail receptacles shall be erected except in a manner to be approved by the Architectural Committee.

The Architectural Committee shall initially be comprised of the Declarant. In the event the Architectural Committee fails to approve or disapprove such design or location within thirty (30) days after plans and specification have been submitted to it, approval will not be required. The Declarant shall be the sole member of the Architectural Committee until January 1, 1999, or until such time as the Declarant shall resign, whichever shall first occur. The Declarant may

appoint an advisory committee comprised of lot owners in the subdivision or other knowledgeable people to assist in evaluating the architectural effect of new construction in the subdivision. Upon resignation by the Declarant, the Board shall designate and appoint three (3) persons to serve on the Architectural Committee. Members of the Architectural Committee shall not be entitled to any compensation for services performed pursuant to this covenant. Nothing herein contained shall be construed to permit interference with the development of the property by the Declarant as long as said development follows the general plan of development of the property.

Section 2. **ARCHITECTURAL REQUIREMENTS:** The Architectural Committee shall make the determination of approval of plans based upon the compatibility and conformity of the design of the proposed residence, building, wall, fence, swimming pool or other improvement.

ARTICLE VII USE RESTRICTIONS

Section 1. **BUILDING UNIT:** A building unit shall consist of each lot specifically enumerated on a map of Whitehart, Phase I, as recorded in Book of Maps 1997, Page , Wake County Registry. The owners of said lots or building units may vary the lines of said lots, but except as might be otherwise provided herein, shall not re-subdivide the lots in such manner that the number of lots within the subdivision will be increased, except that lot number 53-A, including the designated utility area, may subsequently be sub-divided into three lots.

Section 2. **LAND USE AND BUILDING TYPE:** No building shall be used except for residential purposes and no part of said property shall be used for business, manufacturing or commercial purposes. No part of any lot or building unit shall be used for street purposes except with the prior written approval of the Declarant, or its successors or assigns. No structure shall be erected or allowed to remain on any building unit except one single family dwelling not exceeding two and one-half stories in height, which may be used and occupied as a residence for a single family, together with an apartment to be occupied by members of the same family or domestic servants. There may also be located upon said building unit a private garage which may include quarters for servants of the occupants of the dwelling and for storage facilities. Construction of homes must be completed within twelve (12) months after issuance of building permit.

Section 3. **DWELLING SIZE:** No dwelling of one story shall be permitted on any lot having a ground floor area of the main structure of less than one thousand six hundred (1600) square feet, exclusive of one story open porches and garages or carports, nor less than one thousand one hundred (1100) square feet of ground floor area for a dwelling of more than one story. Total finished living area for any dwelling, other than a ranch or one level, shall not be less than two thousand (2000) square feet, exclusive of garages, basements and third-floor rooms. Each dwelling shall have a garage which shall be sufficient for at least two automobiles and shall have operable doors and shall be fully enclosed.

Section 4. **BUILDING LOCATION:** No building shall be located on any lot nearer to the front lot line than sixty (60) feet. No building or structure shall be located nearer than fifteen (15) feet to an interior lot line. However, no side yard shall be required for a garage or other permitted accessory building located one hundred fifty (150) feet or more from the street line. For the purposes of this covenants, eaves, steps and open porches shall not be considered as a part of any building, but this may not be construed to permit any portion of a building or a building unit to encroach on another building unit. The location of all buildings and structures on a lot must have the prior written approval of the Declarant.

Section 5. **LOT SIZE:** No dwelling shall be erected or placed on any lot having a width of less than one hundred ten (110) feet at the minimum building setback line, nor shall any dwelling be erected or placed on any lot having an area of less than thirty thousand (30,000) square feet, provided, a dwelling may be erected on any numbered lot as shown on the subdivision plat.

Section 6. **EASEMENTS:** Easements for installation and maintenance of utilities and drainage facilities are reserved over the rear ten (10) feet of each lot and five (5) feet on each side line of each lot. Within these easements, no structure, fence, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities and drainage facilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easement. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible.

Section 7. **PROHIBITED STRUCTURES:** Mobile homes, shell homes, modular homes, pre-cut, pre-assembled and packaged homes and all other similar type buildings are expressly prohibited on any lot in the subdivision, except that the Declarant may, without being required to do so, approve a home or other out building on any lot with some of its components being pre-cut or pre-assembled. The erection of accessory buildings and fences shall require prior written approval of the Declarant.

Section 8. **TEMPORARY STRUCTURES:** No structure of a temporary character, trailer, basement, mobile home, tent, shack, garage, barn, or other out building shall be used on any lot at any time as a residence, either temporarily or permanently.

Section 9. **NUISANCES:** No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No mobile home or truck cargo trailer shall be allowed to be placed, erected or maintained on any lot. No boats, campers, trucks, inoperable or abandoned cars, mobile homes or trailers shall be placed or permitted to remain on a street or in front of any dwelling constructed on the property. It is lot owner's responsibility at all times to keep lot clean and free of debris or unsightly vegetation. During construction, lot owner shall have installed a temporary fenced-in trash area enclosed by a fence of sufficient height and composition which will prevent construction debris and other trash generated by construction of the dwelling from

blowing onto other property. Owner shall be responsible for having all trash placed in this trash area daily and shall be responsible for removal from other property construction debris which originated from his property, but was blown or placed by other agents onto other property or street right-of-ways. If the lot owner fails to comply with these requirements, the Declarant shall send lot owner a registered letter advising him of his failure to comply and specifying what measures are required for compliance. If necessary measures are not taken within thirty (30) days after receipt of such letter Declarant may have necessary work done for compliance and all costs, including interest at a rate of one and one-half percent (1.5%) per month, shall be charged to the lot owner and a lien placed on the property of the lot owner.

Section 10. UTILITY YARDS: In order to protect the beauty and ensure an uncluttered appearance of the subdivision each residential structure may have attached thereto one or more utility yards. Each yard shall be walled, fenced or screened with vegetation and the entrance thereto shall be screened using materials and with the height and design approved by the developer. The following items may be kept or stored on any lot provided they are not visible from any other lot or right-of-way, or they are located wholly within the main structure or utility yard: Pens, yards and houses for pets, above ground storage of construction materials, wood, coal, oil or other fuels, fuel tanks, tools, and equipment for work, hobbies, or gardening.

Section 11. PETS: No animals, livestock, or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purposes, and provided that the owner of any such pet shall not allow such animal to be at large in the subdivision. No person shall keep or maintain or permit the keeping of, on any lot in the subdivision, any animal or fowl otherwise permitted to be kept which, by habitual or frequent sound, crying, howling, barking, squawking, meowing or other noise, shall disturb the quiet, comfort or repose of any person in the subdivision.

Section 12. SEWAGE DISPOSAL: Sewage disposal shall be by septic tank or by connection to a municipal or health department approved community sewage system if such shall be available at the time of construction of improvements on the land. Septic tank installation layouts shall be approved by a representative of the Wake County Health Department or by such other agency as may have jurisdiction over such matters prior to any construction on any lot and the installation when made shall conform to such approved layout in accordance with the minimum requirements thereof or greater.

Section 13. WATER SYSTEMS: All individual water systems shall be constructed and equipped in accordance with layouts approved by the Wake County Health Department or other agency having jurisdiction.

Section 14. DRIVEWAYS AND LANDSCAPING: All driveways leading from street to a building shall be paved. Such pavings shall be completed simultaneously with completion of the dwelling. No driveway shall be installed until a permit has been obtained from the North Carolina Department of Transportation or Declarant.

During construction of driveways or land disturbing activities undertaken for landscaping purposes on lot or street right-of-way in front of lot, the lot owner undertaking such activity shall be responsible for installing erosion control devices, if necessary, to control water pollution from sedimentation, to prevent accelerated erosion and desedimentation of lakes and natural water courses. These devices, if required by Wake County or Declarant, shall be constructed and maintained in accordance with the then current Wake County Erosion and Sediment Control Ordinance, or the regulations of any other governmental body which may be ceded zoning authority. No construction debris, including concrete washout, shall be placed or dumped on any street right-of-way, easement, open space area, or lot except construction debris may be temporarily stored on lot owners' property during construction. Any ground cover located on the rights-of-way, ditches or slopes of streets which are destroyed during construction activity shall be re-established by the lot owner responsible for such activity.

If the lot owner fails to comply with the above requirements, the Declarant shall send lot owner a registered letter advising him of his failure to comply and specifying what measures are required for compliance. If necessary measures are not taken within thirty (30) days after receipt of such letter, Declarant may have necessary work done for compliance and all cost, including interest at a rate of one and one-half percent (1.5%) per month, shall be charged to the lot owner and a lien placed on the property of the lot owner.

Section 15. SIDING: No building shall be constructed or used whereby imitation siding or cement blocks are visible from the exterior of said structure. No painting of blocks or other material shall be used for the purpose of covering up imitation siding or cement blocks.

Section 16. WAIVER OF VIOLATIONS: The Declarant shall have absolute authority to waive minor violations of Paragraphs 3 and 4 hereinabove. A minor violation of these restrictions shall be construed to mean not more than fifteen percent (15%). In addition, minor violations may be waived by the then owners of a majority of the lots or building units abutting the lot or building unit which is in violation of such restrictions or upon which a structure has been placed which is in violation of such restrictions. These covenants may be extended to include other sections or phases of this subdivision provided an instrument is recorded specifying such.

Section 17. ELECTRICITY: The Declarant reserves the right to subject the real property to a contract with a Carolina Power & Light Company for the installation of underground electric cables and/or the installation of street lighting either or both of which may require an initial payment and/or continuing monthly payment to Carolina Power & Light Company by the owner of each building unit. All utilities shall be installed underground.

Section 18. **GARBAGE DISPOSAL:** All garbage, trash or other refuse shall be deposited temporarily in covered containers located at the rear of the dwelling. It shall be the duty of the lot owner to have their garbage removed weekly by a refuse collector. No garbage shall be burned on any lot and no lot or any part of a lot shall be used as a dumping ground for rubbish.

Section 19. **ANTENNAS:** The Association may regulate the erection of television antennas or satellite reception discs on individual lots.

ARTICLE VIII EASEMENTS

Section 1. **RESERVATION.** All of the properties, including lots and Permanent Open Space, shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines and other public utilities as shall be established by Declarant on any recorded plat and as may have been established by the Declarant or its predecessors in title, prior to the subjecting of the properties to this Declaration; and the Association shall have the power and authority to grant and establish upon, over, under and across the Permanent Open Space conveyed by it, such further easements as are requisite for the convenient uses and enjoyment of the properties.

ARTICLE IX GENERAL PROVISIONS

Section 1. **TERM:** The covenants shall run with the land and be binding upon all parties and persons claiming under them for an initial period of thirty (30) years from the date these covenants are recorded and thereafter for the automatic extension periods as provided for in Article IX, Section 4 of these covenants

Section 2. **ENFORCEMENT:** The Association, or any owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of the Declaration. Failure by the Association or by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 3. **SEVERABILITY:** Invalidation of any one of the Covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 4. AMENDMENT: The covenants and restrictions of this Declaration shall run with and bind the land for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. the Declaration may be amended during the first thirty-year period by an instrument signed by not less than eighty percent (80%) of the lot owners, and thereafter by an instrument signed by not less than seventy percent (70%) of the lot owners, provided that no amendment shall alter any obligation to pay ad valorem taxes or assessments for public improvements, as herein provided, or affect any lien for the payment thereof established herein. For the purpose of such instrument, a husband and wife owning any lots as tenants by the entirety shall be deemed to be two (2) owners. No amendment shall become effective without having been submitted to the local zoning agency for its approval. Any amendment hereto shall be recorded in the Office of the Register of Deeds of Wake County.

Section 5. TRANSFER OF AUTHORITY: Any and all authority delegated to the Declarant by these covenants shall be transferred to a Homeowners Association formed by a majority of the lot owners. This transfer shall take place when all lots have been sold provided a Homeowners Association has been formed at that time. In the event an association has not been formed, this transfer of authority shall take place immediately when the association is formed. In no event shall the Declarant be responsible for enforcing these covenants after a period of one (1) year has elapsed from the date last lot is sold.

Section 6. ATTORNEYS FEES: In the event of litigation to enforce the provisions of these covenants, the party or parties determined to be in violation of these covenants shall pay the reasonable attorneys fees of the party or parties seeking enforcement.

IN WITNESS WHEREOF, H.M. ENTERPRISES, Whitehart Limited, a North Carolina Limited Partnership, being the Declarant herein has caused this Agreement to be executed in its company name by its members who have affixed their hands and seals the day and year first above written.

H.M. ENTERPRISES, Whitehart Limited Partnership
a North Carolina Limited Partnership

By: Joseph M. Thompson
Joseph M. Thompson - General Partner

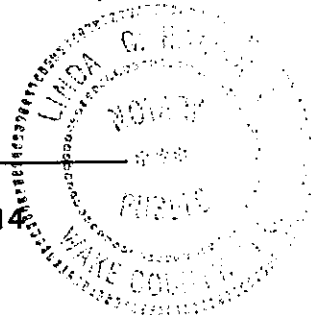
By: Thomas M. Gould
Thomas M. Gould - General Partner

I, a Notary Public of said county and state, do hereby certify that Joseph M. Thompson and Thomas M. Gould, General Partners, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.
Witness my hand and official seal this 23rd day of September, 1997.

Linda C. Hamaker
Notary Public

My commission expires: 10-2-99

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NORTH CAROLINA — WAKE COUNTY

The foregoing certificate ___ of ___

LINDA C. HAMAKER
Notary(y)(ies) Public

is (are) certified to be correct. This instrument and this certificate are duly registered at the date and time and in the book and page shown on the first page hereof.

LAURA M. RIDDICK, Register of Deeds

By: Laura M. Riddick
Asst/Deputy Register of Deeds